

RESOLUTION OF THE
NAVAJO BOARD OF ELECTION SUPERVISORS

Authorizing Transportation Stimulus Plan Referendum Election Pursuant to CO-59-16; Approving Ballot Language; Setting Referendum Date

WHEREAS:

1. Pursuant to 11 N.N.C. §401 *et seq*, the Navajo Board of Election Supervisors is authorized to generally oversee the conduct of all proposed referendum measures, including measures referred by the Navajo Nation Council.
2. On October 27, 2016, the Navajo Nation Council passed resolution *CO-59-16*, entitled "*Relating to Budget and Finance, Naabik'iyáti' Committee, and the Navajo Nation Council; Referring a Referendum Measure on Expenditure of Fund Principal Pursuant to 12 N.N.C. §904, Permanent Trust Fund, To Support the Navajo Nation Transportation Stimulus Plan.*" See Exhibit "A." The subject matter referred for referendum is one not prohibited by law. See also, *CJA-15-17* on postponing election pending funding (resolution incorporated herein by this reference).
3. On February 01, 2017, by resolution *CJY-37-17*, the Navajo Nation Council appropriated \$218,943.00 to conduct the *Transportation Stimulus Plan* referendum (*CJY-37-17* incorporated herein by this reference).

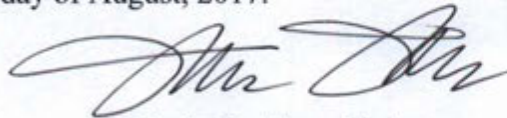
NOW THEREFORE BE IT RESOLVED THAT:

1. The Navajo Board of Election Supervisors, pursuant to *CO-59-16* and related resolutions, authorizes a referendum election. The Board approves the ballot and language as proposed by the Council, and the referendum election date shall be set for October 24, 2017.
2. The Navajo Election Administration shall ensure that all procedural requirements of referendum provisions of the Navajo Election Code are complied with, including providing public notices of the referendum election date and correcting any errors in ballot layout that do not affect the intent or substance of the measure proposed by the Council.
3. The Navajo Nation Division of Transportation (NDOT), in respect to public education, is requested to coordinate and ensure that the voting public is adequately informed of the substance of the *Transportation Stimulus Plan*. Insofar as the implementation of referendum provisions of the Election Code, NDOT is encouraged to coordinate matters with the Navajo Election Administration or seek its assistance. Further, all Navajo Nation programs, including the Office of the President and Vice President and the Office of the Speaker, are requested to provide assistance to the Election Administration and the Division of Transportation in ensuring the proper conduct of the referendum election.

4. The text of the proposed Ordinance shall be made available for review at the polling sites and/or upon request.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Navajo Board of Election Supervisors at a duly called meeting within the Navajo Nation in Window Rock, Arizona, during which a quorum was present and that the same was passed by a vote of 8 in favor, 0 opposed, and 0 abstaining this 10th day of August, 2017.

A handwritten signature in black ink, appearing to read 'Melvin Harrison', written in a cursive style.

Melvin Harrison, Chairperson
Navajo Board of Election Supervisors

Motion: Bertha Aguirre
Second: Mae-Gilene Begay

CO-59-16

RESOLUTION OF THE
NAVAJO NATION COUNCIL

23rd NAVAJO NATION COUNCIL - Second Year, 2016

AN ACTION

RELATING TO BUDGET AND FINANCE, NAABIK'ÍYÁTI' COMMITTEE, AND THE NAVAJO NATION COUNCIL; REFERRING A REFERENDUM MEASURE ON EXPENDITURE OF FUND PRINCIPAL PURSUANT TO 12 N.N.C. §904, PERMANENT TRUST FUND, TO SUPPORT THE NAVAJO NATION TRANSPORTATION STIMULUS PLAN

BE IT ENACTED:

Section One. Authority

- A. Pursuant to 2 N.N.C. § 301(B)(2), the Budget and Finance Committee of the Navajo Nation Council, among other duties and responsibilities, "review[s] and recommend[s] to the Navajo Nation Council the budgeting, appropriation, investment and management of funds."
- B. Pursuant to 2 N.N.C. § 164(A)(9), the Naabik'íyáti' Committee of the Navajo Nation Council reviews all proposed resolutions prepared for Navajo Nation Council consideration.
- C. Pursuant to 11 N.N.C. §403(A), referendum measures are referred to Navajo Nation voters through the Navajo Nation Council.

Section Two. Findings

- A. The Navajo Nation Permanent Trust Fund was established through resolution CJY-53-85.
- B. Each year, the Navajo Nation Council is mandated to "budget a sum equal to at least twelve percent (12%) of any and all projected revenues of the Navajo Nation...." 12 N.N.C. § 901.
- C. The *fund principal* of the Navajo Nation Permanent Trust Fund is defined as follows:

"Fund principal" shall consist of all Navajo Nation Council contributions made pursuant to the twelve

percent (12%) yearly commitment of all revenues of the Navajo Nation, including, but not limited to, revenues received from taxes, oil and gas mining/minerals, timber, land rentals, interest/dividends, gain on sale of securities and other revenue producing activities, plus any additional contributions from any source. 12 N.N.C. §903(A).

- D. The *fund income* of the Navajo Nation Permanent Trust Fund are defined as follows:

"Fund income" shall consist of all earnings generated by the principal of the Fund. 12 N.N.C. §903(B).

- E. Navajo Nation law applicable to the Permanent Trust Fund provides:

"Fund principal shall not be expended except pursuant to a referendum adopted by a two thirds (2/3) majority of those voting in an election open to all registered Navajo voters or as set forth in § 909 of this Chapter. The Navajo Nation Council may place such a referendum on the ballot of any general or special election by a two thirds (2/3) vote of the Council." 12 N.N.C. §904(C).

- F. The referendum question to the Navajo People is whether the fund principal of the Navajo Nation Permanent Fund in the amount of \$216,000,000 over six years at \$36,000,000 per year should be used to support the Navajo Nation Transportation Stimulus Plan of the Navajo Division of Transportation.
- G. The Navajo People will decide based on a two-thirds (2/3) majority vote of those voting. 12 N.N.C. §904 (C).
- H. The Navajo Nation Transportation Stimulus Plan is provided as **Exhibit A**.
- I. It is within the best interest of the Navajo Nation to approve the Navajo Nation Transportation Stimulus Plan of the Navajo Division of Transportation referendum measure.

Section Three. Referring a Referendum Measure and Ballot Language on Use of Fund Principal of the Permanent Trust Fund

The Navajo Nation Council hereby refers a referendum measure and ballot language on the use of the fund principal of the Permanent Trust Fund as follows:

Official Title: "Use of Fund Principal of the Navajo Nation Permanent Trust Fund to Support the Navajo Nation Transportation Stimulus Plan."

Descriptive Summary: The use of the fund principal of the Navajo Nation Permanent Trust Fund requires a referendum vote of registered voters of the Navajo Nation. The referendum ballot question from the Navajo Nation Council is to give Navajo voters the opportunity to decide by a two-third (2/3rd) majority vote of those voting on whether the fund principal of the Navajo Nation Permanent Trust Fund in the amount of \$216,000,000 over six years at \$36,000,000 per year should be used to support the Navajo Nation Transportation Stimulus Plan of the Navajo Division of Transportation.

Brief Statement of Legal Effect:

A "YES" vote is in favor of using \$216,000,000 over six years at \$36,000,000 per year of the fund principal of the Navajo Nation Permanent Trust Fund to support the Navajo Nation Transportation Stimulus Plan of the Navajo Division of Transportation.

A "NO" vote is against using the fund principal of the Navajo Nation Permanent Trust Fund for purposes stated in the attached Navajo Nation Transportation Stimulus Plan. A "NO" vote will not expend any fund principal of the Permanent Trust Fund.

Referendum Ballot Question:

"Should the fund principal of the Navajo Nation Permanent Trust Fund in the amount of \$216,000,000 over six years at \$36,000,000 per year be used to support the Navajo Nation Transportation Stimulus Plan?"

_____ "YES"

_____ "NO"

Section Four. Complete Text of Proposed Legislation Referred by Referendum Measure to use Fund Principal of Permanent Trust Fund

The Navajo Nation Council hereby refers the following language for the referendum measure entitled *Use of Fund Principal of the Navajo Nation Permanent Trust Fund to Support the Navajo Nation Transportation Stimulus Plan* (as shown in Exhibit "A"):

The Fund Principal of the Navajo Nation Permanent Trust Fund in the amount of \$216,000,000, over six years at \$36,000,000 per year, shall be used to provide 20 miles of non-paved road improvement in each of the 24 regions and bridge and gravel development in areas approved by Navajo Division of Transportation. To the extent possible, the Transportation Stimulus Plan fund shall be leveraged with other funds.

Section Five. Waiving 11 N.N.C. § 403(A)

For the purpose of ensuring this referendum measure is referred and considered by the voters of the Navajo Nation in the upcoming 2016 Navajo Nation Chapter General Elections, the 60-day period requirement of 11 N.N.C. § 403 (A) is waived.

Section Six. Vote Requirement

This referendum measure shall pass if a two-third (2/3rd) majority of voters who cast a vote, vote in favor of the referendum measure.

Section Seven. Effective Date

The referendum measure as referred herein shall be effective if approved by referendum vote and upon certification of such election results.

Section Eight. Savings Clause

Should any provision of this legislation, or any provision of the measure approved by referendum vote, be determined invalid by the Navajo Nation Supreme Court, or the District

Courts of the Navajo Nation, without appeal to the Navajo Nation Supreme Court, those portions of the legislation or measure not determined invalid shall remain valid and deemed the law of the Navajo Nation.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Navajo Nation Council at a duly called meeting in Window Rock, Navajo Nation (Arizona) at which a quorum was present and that the same was passed by a vote of 19 in favor and 1 opposed, this 27th day of October 2016.



LoRenzo Bates, Speaker
Navajo Nation Council

11-5-16

Date

Motion: Honorable Alton Joe Shepherd
Second: Honorable Jonathan L. Hale

ACTION BY THE NAVAJO NATION PRESIDENT:

1. I hereby sign into law the foregoing legislation, pursuant to 2 N.N.C. §1005 (C) (10), on this _____ day of _____ 2016.

Russell Begaye, President
Navajo Nation

2. I hereby veto the foregoing legislation, pursuant to 2 N.N.C. §1005 (C) (11), this _____ day of _____ 2016 for the reason(s) expressed in the attached letter to the Speaker.

Russell Begaye, President
Navajo Nation

NAVAJO NATION

RCS# 686

NNC Special Session

10/27/2016

05:10:12 PM

Amd#1 to Amd#

Insert New Exhibit A

PASSED

MOT Tsosie

SEC Filfred

Yea : 19

Nay : 2

Not Voting : 3

Yea : 19

Begay, NM

BeGaye, N

Brown

Chee

Damon

Daniels

Filfred

Hale

Jack

Perry

Pete

Phelps

Shepherd

Slim

Tso

Tsosie

Witherspoon

Yazzie

Yazzie, P

Nay : 2

Begay, K

Smith

Not Voting : 3

Bates

Bennett

Crotty

NAVAJO NATION

RCS# 687

NNC Special Session

10/27/2016

05:23:50 PM

Amd# to Amd#

Legislation 0354-16

PASSED

MOT Shepherd

Referring a Referendum a

SEC Hale

Referendum Measure on Expend.
of Fund Principal pursuant...

Yea : 19

Nay : 1

Not Voting : 4

Yea : 19

Begay, K
Begay, NM
BeGaye, N
Chee
Damon

Daniels
Filfred
Hale
Jack
Perry

Pete
Phelps
Shepherd
Slim
Tso

Tsosie
Witherspoon
Yazzie
Yazzie, P

Nay : 1

Smith

Not Voting : 4

Bennett

Brown

Crotty

Bates

Road Improvement (96 miles per agency per year over a 6 year period)

The proposed Road Improvement for the Stimulus Transportation Plan consists of a break down of the manpower, construction and project management, equipment and materials as listed below. A total of 480 miles of earth roads is proposed improvement with gravel placement, culvert installation and road stabilizer application. A road improvement list is proposed for equal mileage of 20 miles among the twenty-four (24) Regions within the Navajo Nation.

A Force Account Crew consisting of 12 operators and 6 laborers will work on performing road improvement activities such as subgrade preparation, gravel application, culvert installation, and road stabilizer application. Each Bureau of Indian Affairs (BIA) Agency on Navajo will have a Force Account Crew.

Force Account Crew

Description	Quantity (Per Agency)	Cost (Salary)	Total (5 Agencies)	1 Year Cost	6 Year Cost
Operators	12	\$ 384,883.20	60	\$ 1,924,416.00	\$ 11,546,496.00
Laborers	6	\$ 105,331.20	30	\$ 526,656.00	\$ 3,159,936.00
Total	18	\$ 490,214.40	90	\$ 2,451,072.00	\$ 14,706,432.00

A project and construction management team will consist of 1 Construction Engineer, 1 Project Manager and 1 Inspector. This team will oversee, manage, and complete road improvement activities with adhering to the Standard Specifications for the Construction of Roads and Bridges on Federal Highway Projects (FP-14).

Project & Construction Management

Description	Quantity (Per Agency)	Cost (Salary)*	Total (5 Agencies)	1 Year Cost	6 Year Cost
Construction Engineer	1	\$ 55,000.00	5	\$ 275,000.00	\$ 1,650,000.00
Project Manager	1	\$ 55,000.00	5	\$ 275,000.00	\$ 1,650,000.00
Inspector	1	\$ 55,000.00	5	\$ 275,000.00	\$ 1,650,000.00
Total	3	\$ 165,000.00	15	\$ 825,000.00	\$ 4,950,000.00

*Estimated Salary

The Force Account Crew will be equipped with scrapers, loaders, graders, compactors, water trucks, and a back hoe at each BIA Agency. The heavy equipment will be utilized to construct the road improvement activities of subgrade preparation, gravel application, culvert installation and road stabilizer application.

Equipment

Description	Quantity (Per Agency)	Cost (Salary)	Total (5 Agencies)	1 Year Cost	6 Year Cost
Scraper	2	\$ 586,560.00	10	\$ 2,932,800.00	\$ 17,596,800.00
Loader	2	\$ 456,960.00	10	\$ 2,284,800.00	\$ 13,708,800.00
Grader	2	\$ 333,619.20	10	\$ 1,668,096.00	\$ 10,008,576.00
Compactors	2	\$ 288,000.00	10	\$ 1,440,000.00	\$ 8,640,000.00
Water Truck	6	\$ 792,576.00	30	\$ 3,962,880.00	\$ 23,777,280.00
Back Hoe	1	\$ 70,809.60	5	\$ 354,048.00	\$ 2,124,288.00
Total	15	\$ 2,528,524.80	75	\$ 12,642,624.00	\$ 75,855,744.00

Force Account Crew	\$ 14,706,432.00
Project & Construction Mgmt.	\$ 4,950,000.00
Equipment	\$ 75,855,744.00

Total for Force Account Crews, Project Management, & Equipment	\$ 95,512,176.00
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Materials & Resources Breakdown By Agency

Description	Quantity (Per Agency)	1 Year Cost *	Total (6 Years)	6 Year Cost*
Gravel (6" depth)				
Fort Defiance	49,065.6 tons (\$33/ton)	\$ 1,700,123.04	294,393.6 tons	\$ 10,200,738.24
Central	49,065.6 tons (\$33/ton)	\$ 1,700,123.04	294,393.6 tons	\$ 10,200,738.24
Eastern	49,065.6 tons (\$33/ton)	\$ 1,700,123.04	294,393.6 tons	\$ 10,200,738.24
Northern	49,065.6 tons (\$33/ton)	\$ 1,700,123.04	294,393.6 tons	\$ 10,200,738.24
Western	49,065.6 tons (\$33/ton)	\$ 1,700,123.04	294,393.6 tons	\$ 10,200,738.24
Total	245,328 tons (5 Agencies)	\$ 8,500,615.20	1,471,968 tons	\$ 51,003,691.20

Description	Quantity (Per Agency)	1 Year Cost *	Total (6 Years)	6 Year Cost*
Culverts (Assume 10 culvert locations (48" diameter pipe) per mile)				
Fort Defiance	192 culvert locations (300 48"-20' long culverts)	\$ 1,231,817.93	1,152 culvert locations	\$ 7,390,907.60
Central	192 culvert locations (300 48"-20' long culverts)	\$ 1,231,817.93	1,152 culvert locations	\$ 7,390,907.60
Eastern	192 culvert locations (300 48"-20' long culverts)	\$ 1,231,817.93	1,152 culvert locations	\$ 7,390,907.60
Northern	192 culvert locations (300 48"-20' long culverts)	\$ 1,231,817.93	1,152 culvert locations	\$ 7,390,907.60
Western	192 culvert locations (300 48"-20' long culverts)	\$ 1,231,817.93	1,152 culvert locations	\$ 7,390,907.60
Total	960 culvert locations (300 48"-20' long culverts)	\$ 6,159,089.66	5,760 culvert locations	\$ 36,954,537.98

Description	Quantity (Per Agency)	1 Year Cost *	Total (6 Years)	6 Year Cost*
Road Stabilizer (Assume use of Road Bond@ 5.0 totes per mile)				
Fort Defiance	26,400 gallons	\$ 457,380.00	158,400 gallons	\$ 2,744,280.00
Central	26,400 gallons	\$ 457,380.00	158,400 gallons	\$ 2,744,280.00
Eastern	26,400 gallons	\$ 457,380.00	158,400 gallons	\$ 2,744,280.00
Northern	26,400 gallons	\$ 457,380.00	158,400 gallons	\$ 2,744,280.00
Western	26,400 gallons	\$ 457,380.00	158,400 gallons	\$ 2,744,280.00
Total	132,000 gallons	\$ 2,286,900.00	792,000 gallons	\$ 13,721,400.00

Description	Quantity (Per Agency)	1 Year Cost *	Total (6 Years)	6 Year Cost*
Best Management Practices (BMP's) & SWPPP				
Fort Defiance	55.84 acres disturbed	\$ 340,024.61	335.04 acres disturbed	\$ 2,040,147.65
Central	55.84 acres disturbed	\$ 340,024.61	335.04 acres disturbed	\$ 2,040,147.65
Eastern	55.84 acres disturbed	\$ 340,024.61	335.04 acres disturbed	\$ 2,040,147.65
Northern	55.84 acres disturbed	\$ 340,024.61	335.04 acres disturbed	\$ 2,040,147.65
Western	55.84 acres disturbed	\$ 340,024.61	335.04 acres disturbed	\$ 2,040,147.65
Total	279.2 acres disturbed	\$ 1,700,123.04	1675.2 acres disturbed	\$ 10,200,738.24

Description	Quantity (Per Agency)	1 Year Cost *	Total (6 Years)	6 Year Cost*
Quality Control				
Fort Defiance	96 miles	\$ 170,012.30	\$	1,020,073.82
Central	96 miles	\$ 170,012.30	\$	1,020,073.82
Eastern	96 miles	\$ 170,012.30	\$	1,020,073.82
Northern	96 miles	\$ 170,012.30	\$	1,020,073.82
Western	96 miles	\$ 170,012.30	\$	1,020,073.82
Total	480 miles	\$850,061.52	\$	\$ 5,100,369.12

Gravel	\$51,003,691.20
Culverts	\$36,954,537.98
Road Stabilizer	\$13,721,400.00
Best Mgmt. Practice	\$10,200,738.24
Quality Control	\$5,100,369.12

Materials & Resources Total	\$ 19,496,789.42	\$	116,980,736.54
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*Includes Navajo Nation 5% Tax

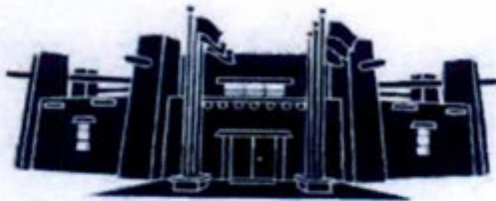
Materials and resources for the road improvement include gravel, culverts, road stabilizer, and construction water. The gravel application depth is calculated at 6 inches for a roadway width of 22 feet. The gravel application will cover 20 miles per 24 Regions per year. The culvert locations are estimated at 10 culvert locations per mile for a total of 5,760 culvert locations. Road stabilizer is estimated at 1,000 gallons per mile using Road Bond. A total estimate of 792,000 gallons of road stabilizer for all 24 Regions.

Materials & Resources

Description	Quantity (Per Agency)	Cost *	6 Years (5 Agencies)	1 Year Cost*	6 Year Cost*
Gravel (6" depth)	49,065.6 tons (\$33/ton)	\$ 1,700,123.04	1,471,968 tons	\$ 8,500,615.20	\$ 51,003,691.20
Culverts (Assume 10 culvert locations (48" diameter pipe) per mile)	192 culvert locations (300 48"-20' long culverts)	\$ 1,231,817.93	5,760 culvert locations	\$ 6,159,089.66	\$ 36,954,537.98
Road Stabilizer (Assume use of Road Bond@ 5.0 totes per mile)	26,400 gallons	\$ 457,380.00	924,000 gallons	\$ 2,286,900.00	\$ 13,721,400.00
Best Management Practices (BMP's) & SWPPP	55.84 acres disturbed	\$ 340,024.61	1675.2 acres disturbed	\$ 1,700,123.04	\$ 10,200,738.24
Quality Control	96 miles	\$ 170,012.30	2,880 miles	\$ 850,061.52	\$ 5,100,369.12
Total		\$ 3,899,357.88		\$ 19,496,789.42	\$ 116,980,736.54

*Includes Navajo Nation 5% Tax

	Force Account Crews, Project Management, & Equipment	\$ 95,512,176.00
	Materials & Resources Total	\$ 116,980,736.54
Total for Force Account Crews, Equipment & Material (2,880 miles for road improvement)		\$ 212,492,912.54
Gravel Development + Bridge Planning & Design		\$ 3,507,087.46
Total for Force Account Crews, Equipment, & Material; Bridge Planning & Design, Gravel Development		\$ 216,000,000.00



November 16, 2016

MEMORANDUM

TO : Tom Platero, Executive Director
Office of Legislative Services

FROM: 
Levon B. Henry, Chief Legislative Counsel

RE : CO-59-16 – No Action by Navajo Nation President

On October 27, 2016 the Navajo Nation Council considered and passed Resolution CO-59-16, *Referring a Referendum Measure on Expenditure of Fund Principal Pursuant to 12 N.N.C. § 904, Permanent Trust Fund, To Support the Navajo Nation Transportation Stimulus Plan*. The Speaker of the Navajo Nation Council certified the resolution on November 3, 2016. On that same day, the Office of the President and Vice-President received the resolution for the President's consideration. Ten days later on November 13, 2016, the Office of the President and Vice-President returned the resolution to the Office of Legislative Services. Neither the Navajo Nation President nor the Vice-President signed the resolution.

Pursuant to 2 N.N.C. § 221(B) "All resolutions that enact new Navajo law or amend existing Navajo law and are adopted by the Navajo Nation Council shall become effective on the day the President of the Navajo Nation signs it into law or the Navajo Nation Council takes action to override the President's veto..." Resolution CO-56-16 specifically refers to 2 N.N.C. § 221(B). The President's powers include signing "legislation passed by the Navajo Nation Council into Navajo law within ten calendar days after the certification of the legislation by the Speaker..." 2 N.N.C. 1005(C)(10). "The President's authority to sign into law or veto legislation shall be deemed waived if not exercised within ten calendar days after certification of the legislation by the Speaker...and the legislation shall be deemed enacted and become effective pursuant to 2 N.N.C. § 221." 2 N.N.C. § 1005(C)(12).

The Speaker certified Resolution CO-59-16 on November 3 and the President's office received the resolution on November 3. The ten-day period extended to November 13, 2016. The President had not signed the resolution within the ten-day period. Therefore, by law Resolution CO-59-16 is deemed enacted and considered Navajo Nation law.

cc: Hon. LoRenzo Bates, Speaker, Navajo Nation Council
Hon. Walter Phelps, Council Delegate
Pete Atcitty, Chief of Staff, Legislative Branch